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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902 E) for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project.

Application 06-08-010
(Filed August 4, 2006)

**ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE LAW JUDGE'S
RULING REGARDING RIGHT OF ENTRY TO PROPERTIES AFFECTED BY
THE PROPOSED PROJECT AND ALTERNATIVE ROUTES**

Pursuant to California Pub. Util. Code §§ 612, *et seq.*, San Diego Gas & Electric Company (SDG&E) has eminent domain authority to condemn property necessary for the construction and maintenance of its electric plant. Pursuant to California Code of Civil Procedure, §§ 1245.010, *et seq.*, SDG&E has the authority to enter property which may be condemned for a proposed project in order to "make photographs, studies, surveys, examinations, tests, soundings, borings, samplings, or appraisals or to engage in similar activities reasonably related to acquisition or use of the property for that use." (Cal. Code of Civ. Pro. § 1245.010.)

In order to enter such property, the California Code of Civil Procedure requires that SDG&E either obtain written consent from the landowner or obtain an order for entry from the superior court in accordance with § 1245.030. (Cal. Code of Civ. Pro. § 1245.020.)

As part of the process for considering the project proposed in this application, the Commission must prepare an environmental impact report pursuant to the California Environmental Quality Act¹ (CEQA). This environmental review requires the Commission to consider both the proposed project route and alternative routes. Some of the studies related to this environmental review require Commission employees and consultants to enter the property under consideration.

In order for the Commission to complete its environmental review, SDG&E must exercise its right of entry powers on behalf of Commission staff and its consultants so that they may enter those properties affected by the proposed project route and the alternative routes that the Commission intends to fully analyze in the environmental impact report. We hereby order SDG&E to: (1) immediately cooperate with CPUC environmental review staff, which will identify those properties where such right of entry is needed, and (2) obtain the relevant court order if owner consent cannot be obtained.

Further, because of the impacts on the affected communities and the properties under review, and the limited resources of both the Commission and SDG&E, it is critical that the Commission and SDG&E devote their attention exclusively to the proposed project and the alternatives that are being fully analyzed by the environmental review staff. In addition, it is essential that intrusive studies be held to the minimum necessary, in order to protect sensitive habitat and existing uses. Consequently, we hereby order SDG&E to limit its exercise of its right of entry authority in the manner described below.

¹ California Environmental Quality Act, Cal. Pub. Resource Code §§ 21000 *et seq.*

Accordingly, **IT IS RULED** that:

1. As set forth above, San Diego Gas & Electric Company (SDG&E) shall, on behalf of the Commission's environmental review staff, use all deliberate speed to obtain rights of entry to private land to be studied pursuant to the CEQA and/or the National Environmental Policy Act (NEPA). Any SDG&E employee with such entry rights shall accompany the Commission's environmental review staff and consultants onto the lands in question so that the staff and consultants can independently perform the necessary studies. As necessary, SDG&E shall seek court orders to enter properties affected by the Proposed Project or Alternatives.

2. SDG&E shall request that any court order, as described above, allow the Commission environmental review staff, consultants and SDG&E to conduct the following activities upon the property:

- a. Drive on existing dirt roads;
- b. Traverse land on foot;
- c. Make observations of such land for the purpose of gathering information useful in finding and recovering the placement of existing survey monuments (e.g., survey lines, boundary lines, property lines, etc.) to assist in establishing optimal positioning of electrical transmission line towers and related facilities, or underground transmission installations and related facilities;
- d. Place wooden lath stakes as appropriate in order to delineate existing survey monuments;
- e. Place ground spikes or wood hubs as appropriate in order to facilitate delineation of existing survey monuments;

- f. Displace, and replace as appropriate, surface soil with a hand trowel or shovel in order to facilitate delineation of existing survey monuments;
- g. Employ Global Positioning System surveying technology which emits radio signals in order to facilitate delineation of existing survey monuments;
- h. Employ conventional surveying instrumentation which uses infrared technology to delineate existing survey monuments;
- i. To the minimal extent necessary, trim brush that obstructs proper utilization of surveying instrumentation.

Such court orders should also provide entry to perform all other activities authorized by California Code of Civil Procedure § 1245.010, including, but not limited to, environmental studies, and land surveying as further authorized by California Business & Professions Code § 8774.

3. Those involved in the studies shall conduct them in the least invasive and most ecologically sensitive manner possible. SDG&E, Commission environmental review staff, and consultants shall delineate the habitat of endangered species and historical locations prior to conducting surveying activities, and, to the extent possible, avoid entering those areas or disturbing them in any way.

4. In order to avoid unnecessary interference with private use and sensitive habitat, and to conserve limited staff, consultant, and utility resources, SDG&E shall not enter land that is not directly related to the proposed project route or alternatives being fully analyzed by the environmental review staff without prior Commission approval.

5. Prior to exercising any right of entry related to this application pursuant to a right of entry order granted by the superior court, SDG&E shall notify Commission environmental review staff by e-mail at BCB@cpuc.ca.gov and SLee@aspeneg.com at least two business days in advance in order to confirm that the effected property is under consideration as part of the proposed project or an alternative being fully analyzed by the environmental review staff, unless the entry is pursuant to a specific request from the Commission staff.

Dated March 13, 2007, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Assigned Commissioner

/s/ STEVEN WEISSMAN

Steven Weissman
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated March 13, 2007, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid